IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

WEDNESDAY, THE 11TH JULY 2007 / 20TH ASHADHA 1929

OP.No. 28671 of 2000(L)

PETITIONER:

K.SOOSAMMA JOHN, ASSISTANT ENGINEER(WORKS),
N.H.(B) SUB DIVISION No.1, PONNURUNNI,
KOCHI-19.

BY ADV. SRI.M.V.BOSE
SRI.CHERIAN VARGHESE
SRI.VINOD MADHAVAN

RESPONDENTS:

1. **THE STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**

2. **THE CHIEF ENGINEER, P.W.D. ROADS AND BUILDINGS, ADMINISTRATION, THIRUVANANTHAPURAM.**

3. **THE ACCOUNTANT GENERAL (A & E), THIRUVANANTHAPURAM.**

BY GOVERNMENT PLEADER SMT. G.P.RAMANI

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 11/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NOS.48302/2000 AND 29929/2001 IN O.P.NO.28671/2000

DISMISSED

11.07.2007 Sd/- THOTTATHIL B.RADHAKRISHNAN,JUDGE

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF THE ORDER DATED 25.7.1998 OF THE 2ND RESPONDENT.

EXT.P2: COPY OF ORDER NO.EB.66250/91 DATED 22.8.1998 OF THE 2ND RESPONDENT.

EXT.P3: COPY OF G.O.(P)1041/79(142)/FIN DATED 27.11.1979.

EXT.P4: COPY OF AUDIT ENQUIRY NO.21 DATED 23.9.1996.

EXT.P5: COPY OF REPRESENTATION FROM THE PETITONER TO 2ND RESPONDENT DATED 20.5.2000.

EXT.P5(a): COPY OF STATEMENT OF FIXATION OF PAY IN THE RESISED SCALE SANCTIONED IN G.O.(P) NO.600/93/FIN. DT.25.9.93 READ WITH G.O.P.NO.930/93(2) FIN DATED 8.12.1993.

ADDL.EXT.P3(a): COPY OF G.O.(P) 1041/79(142) FIN DATED 27.11.79 WITH ANNEXURE THE PORTION CONTAINING 'DRAFTSMAN GRADE II'.

TRUE COPY

P.A.TO JUDGE

THOTTATHIL B.RADHAKRISHNAN,J
==========

O.P.No.28671/2000
==========

JUDGEMENT

Dated, 11th July, 2007

THOTTATHIL B.RADHAKRISHNAN,J

==========

O.P.No.28671 of 2000

==========

Dated this the 11th day of July, 2007

JUDGMENT

Petitioner entered the service as a Tracer on 21.1.1970. On 13.7.1970 she was promoted as Second Grade Overseer. Thereafter she was promoted as First Grade Overseer on 29.6.1981 and as Assistant Engineer on 25.10.1997. Having enjoyed three regular promotions, there was no question of granting the petitioner as second higher grade. However, that was erroneously granted. This was noted in audit and recovery of the over-drawals was ordered. Such amount has been recovered by the Government from the petitioner's pay, DCRG etc.

2. The plea of the petitioner is that her placement as a Second Grade Overseer on 13.7.1970 within a period of six months of her entry into service cannot be treated as a promotion, but only an appointment by transfer. The category of Tracer and Category of Second Grade Overseer are part of the

service constituted and governed by the Special Rules for the Kerala Public works Engineering Subordinate Service. Those rules provide promotion as the method of appointment as Second Grade Overseer from the category of Third Grade Overseer/Tracer etc. It is a case where the petitioner was given an erroneous promotion. She, however, enjoyed that also. But for such promotion, her entitlement for further promotion on the dates noted above would not have legitimately accrued in terms of the Special Rules. Reverting to Rule 2(13) in Para I of Kerala Service Rules, it can be seen that an appointment by transfer, thereby meaning the entitlement of a person to be called as recruited by transfer, would arise only if at the time of his such appointment, he was either a full member or an approved probationer in any other service. This is not one so since appointment by transfer is not a method by which the petitioner could have been placed in the category of Second Grade Overseer, while she was promoted, from a lower post in the same service.

3. For the forgoing reasons, impugned action taken by the respondents is not faulty. There is no illegality, irregularity or jurisdictional error in the impugned decisions.

In the results, the writ petition fails and is dismissed. No costs.

THOTTATHIL B.RADHAKRISHNAN, JUDGE

dvs